

## REPORT OF THE RENEWABLE ENERGY SUBCOMMITTEE

This report covers the following developments in selected states and at the Federal Energy Regulatory Commission (FERC) during 2016.\*

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## I. STATE ACTIVITY

### A. Northeast

#### 1. Connecticut

##### a. Net Metering

On June 10, 2016, Connecticut Governor Dan Malloy signed Public Act 16-216, which authorized virtual net metering credits to municipal customer hosts in the amount of \$6 million per year.<sup>1</sup> The amount available will be apportioned to each electric distribution company based on consumer load, provided that eligible municipal customer hosts have submitted their interconnection and virtual net metering applications by April 13, 2016.<sup>2</sup> These funds are in addition to \$10 million per year of credits previously provided to municipal, state, and agricultural customer hosts.<sup>3</sup> The Connecticut state legislature also passed House Bill 5496, requiring that the virtual net metering facilities must be operational within eighteen months from the date the state Department of Energy and Environmental Protection issues the final permit.<sup>4</sup>

In March 2016, at the request of three separate projects, the Connecticut Public Utilities Regulatory Authority (PURA) re-opened a prior decision requiring a one-year time frame for projects to begin commercial operations after entering the virtual net metering queue.<sup>5</sup> In its final decision issued on October 26, 2016, PURA recognized that “different [virtual net metering] projects require varying amounts of time to complete” and ordered an “automatic six-month extension for projects that sign an interconnection agreement and pay construction fees within the first year of being in the queue.”<sup>6</sup> Additionally, to ensure that funds for virtual net metering are distributed as widely as possible, “each customer host may not build facilities that cumulatively exceed three megawatts [(MW)].”<sup>7</sup> Furthermore, agricultural virtual net metering programs must be a current customer that has used electricity for agricultural purposes for at least one year prior to its submittal of an application.<sup>8</sup>

##### b. Residential Solar Investment Program

In June 2016, Connecticut removed the twenty kilowatt (kW) system size limit for residential solar photovoltaic (PV) systems and required that the master

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1. 2016 Conn. Acts 216, § (a)(2) (Reg. Sess.).

2. *Id.* § (a)(1).

3. *Id.*

4. 2016 Conn. Acts 134, § (1)(h) (Reg. Sess.).

5. *PURA Development of the Administrative Processes and Program Specifications for Virtual Net Metering—Project Time Period and Agricultural Status*, Docket No. 13-08-14RE03 (Conn. Pub. Util. Regulatory Auth. Oct. 26, 2016).

6. *Id.* at 10.

7. *Id.*

8. *Id.*

purchase obligations be based on annual fifteen-year tranches instead of a fifteen-year contract.<sup>9</sup>

## 2. New Hampshire

### a. Net Metering

The New Hampshire legislature passed H.B. 1116 in May 2016 raising the state's net metering aggregate capacity limit from 50 MW to 100 MW.<sup>10</sup> The bill also directed the New Hampshire Public Utilities Commission (NH PUC) to initiate a proceeding to develop new alternative net metering tariffs, which is currently underway.<sup>11</sup> Additionally, the legislature limited the amount of capacity space an entity may reserve in the net metering interconnection queue to 20% of the total net metering utility-specific allocation.<sup>12</sup>

### b. Energy Efficiency Resource Standard

On August 2, 2016, the NH PUC published Order No. 25,932, approving a settlement agreement creating the state's first Energy Efficiency Resource Standard (EERS).<sup>13</sup> Initiated by the New Hampshire Governor's Office of Energy and Planning to create a ten-year energy strategy,<sup>14</sup> the EERS will become effective January 1, 2018.<sup>15</sup> Under the EERS, electric utilities in New Hampshire are to achieve savings as a percentage of 2014 statewide delivered sales, equivalent to 0.8% in 2018, 1.0% in 2019, and 1.3% in 2020 with an overall savings of 3.1% compared to the 2014 baseline.<sup>16</sup> The targeted savings for gas utilities as a percentage of 2014 statewide delivered sales are 0.7% in 2018, 0.75% in 2019, 0.8% in 2020, and an overall savings of 2.25% relative to the 2014 baseline.<sup>17</sup>

### c. Renewable Portfolio Standard

The New Hampshire legislature amended the state's renewable portfolio standard making biodiesel eligible to meet up to one-eighth of a provider's new renewable energy requirement.<sup>18</sup>

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9. 2016 Conn. Acts 212, § (6)(a) (Reg. Sess.).

10. *Id.*

11. H.R.B. 1116, 2016 Reg. Sess. § 31:3 (N.H. 2016).

12. S.B. 378, 2016 Reg. Sess. (N.H. 2016).

13. Order No. 25,932 Approving Settlement Agreement, *Energy Efficiency Resource Standard*, Docket No. 15-137 (N.H. Pub. Serv. Comm. 2016).

14. *Id.*

15. *Id.* at 23.

16. *Id.* at 55.

17. *Id.* at 56.

18. S.B. 386, 2016 Reg. Sess. (N.H. 2016).

### 3. New York

#### a. Reforming the Energy Vision

On May 19, 2016, the New York Public Service Commission (NYPSC) adopted an order that established a ratemaking and utility revenue model policy framework regarding the Reforming the Energy Vision (REV) program.<sup>19</sup> The focus of the decision was to “create a modern regulatory model that challenges utilities to take actions to achieve . . . objectives by better aligning utility shareholder financial interest with consumer interest.”<sup>20</sup> Utilities have four ways of achieving earnings: 1) traditional cost-of-service earnings; 2) earnings tied to achievement of alternatives that reduce utility capital spending and provide definitive consumer benefit; 3) earnings from market-facing platform activities; and 4) transitional outcome-based performance measures.<sup>21</sup> The three principles of the order are as follows: 1) the unidirectional grid must evolve into a more diversified and resilient distributed model engaging customers and third parties; 2) ensuring universal, reliable, resilient, and secure delivery service at just and reasonable prices remains a function of regulated utilities; and 3) the overall efficiency of the system and consumer value and choice must be improved by achieving a more productive mix of utility and third-party investment.<sup>22</sup> The subject of the order relates to financial incentives for REV activities such as Distributed Energy Resources (DER) integration and grid modernization, and states that New York will move toward a modernized utility business model.<sup>23</sup> The NYPSC found that, when enabled “by adequate information and pricing, DER can drive greater system efficiencies, increase system resiliency, facilitate the use of weather-variable renewable resources both in front of and behind the meter, and reduce the overall energy bill for the benefit of all New York customers.”<sup>24</sup>

One of the specific measures mentioned in the order indicated that the NYPSC’s goal is to achieve a Clean Energy Standard of 50% renewable generation by 2030.<sup>25</sup> The order states that utilities should “have earning opportunities tied to reducing the overall cost of achieving [this] goal.”<sup>26</sup> The NYPSC found that the “specific nature of [these] opportunities . . . depend[s] on policy and implementation decisions made in the [Clean Energy Standard] proceeding,” and utilities will also be encouraged to propose programs to accelerate the conversion of transportation and building end uses to efficient electric alternatives.<sup>27</sup>

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19. *Order Adopting a Ratemaking and Utility Revenue Model Policy Framework*, Docket No. 14-M-0101 (N.Y. Pub. Serv. Comm’n 2016).

20. *Id.* at 2.

21. *Id.*

22. *Id.* at 2-3.

23. *Id.* at 8.

24. *Order Adopting a Ratemaking and Utility Revenue Model Policy Framework*, Case No. 14-M-0101 at 34-35 (N.Y. Pub. Serv. Comm’n 2016).

25. *Id.* at 90.

26. *Id.* at 26.

27. *Id.*

### b. Clean Energy Standard

In 2015, New York Governor Andrew Cuomo mandated that the New York State Department of Public Service (DPS) develop a Clean Energy Standard to meet New York's 50% renewable energy plan by 2030.<sup>28</sup> Furthermore, the Governor directed DPS to find solutions to keep emission-free nuclear power facilities operational to reduce greenhouse gas emissions.<sup>29</sup>

In January 2016, the NYPSC directed the DPS staff to develop a White Paper for consideration of a Clean Energy Standard program.<sup>30</sup> The White Paper was released on January 25, 2016.<sup>31</sup> The White Paper provides multiple examples for eligible renewable energy resources, including wind, solar, hydroelectric, biomass, biogas, liquid biofuel, fuel cells, and tidal ocean.<sup>32</sup> The White Paper also provided a mechanism for continued operation of zero-emission power plants, by requiring all utilities obtain a pro rata share of Zero Emission Credits (ZECs) from qualified nuclear facilities.<sup>33</sup>

On August 1, 2016, the NYPSC adopted an order implementing the Clean Energy Standard.<sup>34</sup> The Clean Energy Standard will require 50% of New York's electricity to come from renewable energy by 2030.<sup>35</sup> In the first phase of the plan, utilities will be required to phase in renewable power resources starting with 26.32% of the state's total electricity load in 2017.<sup>36</sup> In 2021, it will grow to 30.54% of the statewide total.<sup>37</sup>

### c. ESCO Investigation

On February 23, 2016, the NYPSC issued an Order Resetting Retail Energy Markets and Establishing Further Process.<sup>38</sup> The Order limited energy service companies (ESCOs) to only two types of product offerings.<sup>39</sup> They could enroll mass market customers and renew expiring agreements using contracts that guarantee savings in comparison to what the customer would have paid as a full service utility customer, or they could enroll customers using products that were at least 30% renewable electricity.<sup>40</sup> On July 22, 2016, the New York Supreme Court

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28. *Id.* at 20.

29. *Id.*

30. N.Y. DEP'T PUB. SERV., STAFF WHITE PAPER ON CLEAN ENERGY STANDARD: CASE 15-E-0302 (Jan. 25, 2016).

31. *Id.*

32. *Id.* at app. 1.

33. *Id.* at 6.

34. *Order Adopting a Clean Energy Standard*, Case No. 15-E-0302 (N.Y. Pub. Serv. Comm'n 2016).

35. *Id.* at 85.

36. *Id.* at 15.

37. *Id.*

38. *Order Resetting Retail Energy Markets and Establishing Further Process*, Case Nos. 15-M-0127, 12-M-0476, 98-M-1343 (N.Y. Pub. Serv. Comm'n 2016).

39. *Id.*

40. *Id.* at 2.

vacated the Order, and held that ESCOs were denied due process by the NYPSC.<sup>41</sup> The court remanded the matter to the NYPSC for further proceedings.<sup>42</sup>

The NYPSC issued a notice on December 2, 2016, launching an investigation into the practices of ESCOs.<sup>43</sup> The notice indicates the investigation will address “whether ESCOs should be completely prohibited from serving their current products to mass-market customers” and “whether the regulatory regime, rules and Uniform Business Practices (UBP) applicable to ESCOs need to be modified to implement such a prohibition.”<sup>44</sup> On December 16, 2016, the NYPSC entered an order prohibiting ESCOs from selling electricity and natural gas to low-income customers.<sup>45</sup> Any ESCO seeking a waiver of the prohibition had to request the waiver within thirty days after the December 16 Order.<sup>46</sup>

#### 4. Rhode Island

##### a. Property Tax Incentives

On June 27, 2016, Rhode Island enacted a 100% exemption from property taxes for qualifying renewable energy systems and associated equipment used in residential and manufacturing facilities.<sup>47</sup> Eligible renewable energy resources include direct solar radiation, wind, ocean, geothermal, small hydro, eligible biomass fuels, and fuel cells using renewable resources.<sup>48</sup> Renewable energy equipment used in commercial facilities is not eligible for the exemption,<sup>49</sup> but under an amendment to the Rhode Island General Law, may qualify for a tax stabilization agreement with the municipal government.<sup>50</sup> To further this goal, the state Office of Energy Resources is developing a commercial renewable energy system tangible tax rate for municipal ordinances.<sup>51</sup>

##### b. Net Metering

As part of its comprehensive energy and renewables reform and incentive package, Rhode Island added a Shared Solar facilities component to its net metering program.<sup>52</sup> Shared Solar facilities include multifamily, campuses, multi-structure business parks, multi-tenant, or multi-owner commercial facilities, and public

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41. Order, *Nat'l Energy Supply Ass'n v. N.Y. Pub. Serv. Comm'n*, Index No. 868-16 (N.Y. July 22, 2016).

42. *Id.* at 22.

43. *Notice of Evidentiary and Collaborate Tracks and Deadline for Initial Testimony and Exhibits*, Case Nos. 15-M-0127, 12-M-0476, 98-M-1343 (N.Y. Pub. Serv. Comm'n 2016).

44. *Id.* at 3.

45. *Id.* at 8.

46. See Paul Ring, *NY ESCOs Given Only 30 Days to Petition for Waiver of Low-Income Service Ban*, ENERGY CHOICE MATTERS (Dec. 19, 2016), <http://www.energychoicematters.com/stories/20161219a.html>.

47. H.R.B. 8354, 2016 Gen. Assemb., Jan. Sess. (R.I. 2016), <http://webserver.rilin.state.ri.us/BillText/BillText16/HouseText16/H8354A.pdf>; R.I. GEN. LAWS § 44-3-3(a)(48) & (49) (2016), <http://webserver.rilin.state.ri.us/Statutes/TITLE44/44-3/44-3-3.HTM>.

48. H.R.B. 8354, 2016 Gen. Assemb., Jan. Sess. At 13 (R.I. 2016).

49. *Id.* at 30.

50. *Id.*

51. *Id.* at 32.

52. *Id.* at 19.

entities with multiple accounts with generation capacity up to 250 kW that allocate bill credits to at least two, and no more than fifty, accounts in the same customer class and on the same or adjacent parcels of land.<sup>53</sup>

### c. Renewable Energy Standard

Rhode Island extended and increased its renewable energy standard, which now requires that 38.5% of the total retail electricity be obtained from eligible renewable resources by 2035.<sup>54</sup>

## 5. Vermont

### a. Renewable Projects Siting Requirements

In June, Governor Peter Shumlin signed S. 260 into law, revising Vermont's requirements for siting renewable energy projects.<sup>55</sup> The law grants "substantial deference" to municipalities and planning commissions in Public Service Board Proceedings,<sup>56</sup> provides funding to support planning efforts,<sup>57</sup> and mandates cross-sectoral planning for new energy projects.<sup>58</sup>

### b. Renewable Energy Requirement

The Vermont Public Service Board (VPSB) moved forward with implementing 2015's H.56 legislation, which required regulated utilities to use 75% renewable energy by 2032 (with 10% of utility sales coming from distributed resources).<sup>59</sup> The VPSB issued its final order implementing the renewable energy standard in June 2016, outlining the resource types eligible for each segment of the statutory standard.<sup>60</sup> The order took effect on January 1, 2017.<sup>61</sup> The VPSB similarly has issued a final rule to revise Vermont's implementation of PURPA.<sup>62</sup> The proposed rule would provide for standard contracts of up to seven years for qualifying facilities and requires utilities to update their avoided costs every two years.<sup>63</sup>

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53. *Id.*; R.I. Gen. Laws § 39-26.6 (2016), <http://webserver.rilin.state.ri.us/Statutes/TITLE39/39-26.6/INDEX.HTM>.

54. H.R.B. 7413, 2016 Gen. Assemb., Jan. Sess. (R.I. 2016), <http://webserver.rilin.state.ri.us/BillText/BillText16/HouseText16/H7413A.pdf>; R.I. Gen. Laws § 39-26-1 et seq. (2016), <http://webserver.rilin.state.ri.us/Statutes/TITLE39/39-26/INDEX.HTM>.

55. 2016 Vt. Acts & Resolves, Act 174.

56. *Id.* at 23.

57. *Id.* at 38.

58. *Id.* at 17.

59. 2015 Vt. Acts and Resolves, Act 56.

60. Order Implementing the Renewable Energy Standard, *Investigation re: Establishment of the Renewable Energy Standard Program*, Docket No. 8550 (Vt. Pub. Serv. Bd. Jun. 28, 2016), <http://psb.vermont.gov/sites/pS.B./files/8550%20Final%20Order.pdf>.

61. *Id.* at 2.

62. Rule 4.100, *Small Power Production and Cogeneration* (Vt. Pub. Serv. Bd. 2016).

63. *Id.* at 4.



### c. Net Metering Cap Raised

In June, the VPSB approved Green Mountain Power's petition to raise its net metering cap to accommodate 7.5 MW of incremental projects with capacities greater than 15 kW.<sup>64</sup> Following a yearlong process, the VPSB has separately issued a proposed rule to expand the net-metering cap for smaller projects statewide, which would be adopted on January 1, 2017.<sup>65</sup>

### d. Comprehensive Energy Plan

The Vermont Department of Public Service completed an update of the state's Comprehensive Energy Plan.<sup>66</sup> The plan calls for meeting 90% of the state's energy needs from renewable sources by 2050, and achieving end-use sector goals of 10% renewable transportation, 30% renewable buildings, and 67% renewable electric power by 2025.<sup>67</sup>

## B. West

### 1. Arizona

#### a. Net Metering

On October 7, 2016, an Arizona Corporation Commission (A.C.C.) Administrative Law Judge issued a Recommended Opinion and Order (ROO) in the A.C.C.'s Investigation of Value and Cost of Distributed Generation.<sup>68</sup> This proceeding is the result of a long running dispute over the A.C.C.'s net metering policies and arose from an earlier Arizona Public Service Company (APS) rate case in which net metering was a highly contested issue based on the APS concern that its non-solar customers were subsidizing its solar distributed generation customers.<sup>69</sup> After an evidentiary hearing, two workshops, testimony, briefing and comments by thirty-five parties,<sup>70</sup> the ROO adopted a methodology for calculating the value of distributed generation.<sup>71</sup> This value will be used to set the rate a utility must pay to its net metering customers for excess power generated by the customer's distributed generation that is "exported to the grid."<sup>72</sup> The methodology

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64. Procedural Order, *Petition of Green Mountain Power Corp. for Approval to Offer Customers Net-Metering Above the Statutory Cap Pursuant to 30 V.S.A. §219a(h)(1)(A)*, Docket No. 8652 (Vt. Pub. Serv. Bd. Mar. 17, 2016), <http://psb.vermont.gov/sites/psbnew/files/orders/8652%20Order%20re%20procedure%20and%20comments.pdf>.

65. Proposed Rule 5.100, *Rule Pertaining to Construction and Operation of Net-Metering Systems* (Vt. Pub. Serv. Bd. Oct. 16, 2016) <http://psb.vermont.gov/document/annotated-final-proposed-rule-5100>.

66. VT. DEP'T PUB. SERV., COMPREHENSIVE ENERGY PLAN 2016 (2016), [https://outside.vermont.gov/sov/webservices/Shared%20Documents/2016CEP\\_Final.pdf](https://outside.vermont.gov/sov/webservices/Shared%20Documents/2016CEP_Final.pdf)

67. *Id.*

68. *In re the Commission's Investigation of Value and Cost of Distributed Generation*, Docket No. E-00000J-14-0023 (Ariz. Corp. Comm'n Oct. 7, 2016) [hereinafter *A.C.C. Investigation*].

69. *Id.* at 3; see also Decision No. 74202, *In re Arizona Public Service Company's Application for Approval of Net Metering Cost Shift Solution*, Docket No. E-01345A-13-0248 (Ariz. Corp. Comm'n Dec. 3, 2013).

70. *Id.* at 3-5.

71. *Id.*

72. *Id.* at 134.

adopted by the ROO, the Resource Comparison Proxy Methodology, is the methodology proposed by the A.C.C.'s Utility Division Staff and looks at purchase power agreements with large scale solar projects to set the "export" rate.<sup>73</sup> The methodology is required for use in future electric utility rate cases, including cases pending at the time of final order, although an avoided cost model may also be used in the future once certain details are resolved.<sup>74</sup> The new rate set in future rate cases will only apply to distributed generation customers who sign up for distributed generation interconnection after the effective date of the decision in that utility rate case.<sup>75</sup> Solar industry groups objected to the ROO because it failed to take into account the additional benefits of distributed generation that flow from avoided future infrastructure investments.<sup>76</sup> They maintain that the net metering rate should include the value of those benefits.<sup>77</sup> The ROO was reviewed by the A.C.C. at the December 19 and 20, 2016 Open Meeting.<sup>78</sup> By a four to one vote, the A.C.C. adopted the ROO with certain modifications, such as capping new rates at a 10% reduction each year and allowing existing rooftop customers to keep their rates for twenty years, while new customers will be locked into set rates for ten years.<sup>79</sup>

#### b. Renewable Portfolio Standard

At the request of A.C.C. Chairman Doug Little, the A.C.C. opened a docket to consider increasing the Renewable Energy Standard and Tariff (REST) from 15% by 2025 to 30% by 2030.<sup>80</sup> The docket is called "*In the matter of the Arizona Corporation Commission's Examination into the Modernization and Expansion of the Arizona Renewable Energy Standard and Tariff*."<sup>81</sup> The current REST rules were adopted in 2007.<sup>82</sup> Chairman Little requested this docket in August 2016 because of the increasing development and the declining costs of renewable resources.<sup>83</sup> Chairman Little specifically noted that the median price for residential PV had dropped from about \$12 a watt in 2007 to around \$4 a watt in 2015.<sup>84</sup> He also said that solar and wind technology had matured and could 'no longer reasonably be considered as "emerging technologies."<sup>85</sup> In a separate letter to the

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73. *Id.* at 151.

74. *A.C.C. Investigation*, *supra* note 68, at 170.

75. *Id.* at 171.

76. *Id.*

77. *Id.* at 8-9.

78. *Id.*

79. Decision No. 75859, *In re the Commission's Investigation of Value and Cost of Distributed Generation*, Docket No. E-00000J-14-0023 (Ariz. Corp. Comm'n Jan. 3, 2017).

80. Memorandum from the Office of Chairman Doug Little to Docket Control of the Arizona Corporation Commission (Aug. 22, 2016), <http://docket.images.azcc.gov/0000172774.pdf> [hereinafter Aug. 22 Memorandum].

81. *See generally To Open a New Docket for Review, Modernization and Expansion of the Arizona Energy Standards and Tariff Rules and Associated Rules*, Docket No. E-00000Q-16-0289 (Ariz. Corp. Comm'n 2016).

82. ARIZ. ADMIN. CODE § R14-2-1801 *et seq.* (2007).

83. Aug. 22 Memorandum, *supra* note 80.

84. *Id.*

85. *Id.*

docket, Chairman Little posed numerous questions which he asked stakeholders to address.<sup>86</sup> Fifteen stakeholders filed comments on November 30, 2016.<sup>87</sup> Subsequently, Commissioner Tobin filed a letter in the docket agreeing that “. . . the time is ripe to revisit and revise REST.”<sup>88</sup> Commissioner Tobin spoke positively about the Clean Peak Standards offered by the Residential Utilities Consumers Office (RUCO), which encourage renewable and carbon free technologies to compete as the least cost resources to satisfy system peak, and would require 30% of delivered MWh during peak demand period to come from qualifying Clean Peak resources.<sup>89</sup> Commissioner Tobin specifically encouraged consideration of nuclear power as part of this portfolio and criticized “. . . arbitrary renewable goals that ignore significant zero emission resources like Palo Verde Nuclear Generating Station.”<sup>90</sup> The A.C.C. has not yet set a procedural schedule for this matter, but the matter could result in the commencement of a rule making proceeding to amend the REST.<sup>91</sup>

## 2. California

In January 2016, the California Public Utilities Commission (CPUC) adopted a successor net energy metering tariff.<sup>92</sup> Under the new tariff, customers will pay an estimated interconnection fee of \$75-\$150; be responsible for all non-bypassable charges for all electricity consumed from the grid; and go on a time-of-use rate.<sup>93</sup> The net metering successor tariff will take effect for California’s three largest utilities, Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric, on the earlier of July 1, 2017 or when 5% of the utility’s sum of non-coincident customer peak demand is reached.<sup>94</sup>

The CPUC also established rules for net metering PV systems paired with storage of 10 kW or less.<sup>95</sup> The April 2016 order adopted an estimation methodology for determining net energy metering billing credits for storage devices with a capacity of 10 kW or less, and eliminated the need to install extra equipment required for storage devices greater than 10 kW.<sup>96</sup> Specifically, utilities are required to establish monthly maximum allowable output limits for net metering

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86. Letter from Doug Little, Chairman, Ariz. Corp. Comm’n (Sept. 14, 2016), <http://images.edocket.azcc.gov/docketpdf/0000173319.pdf>.

87. See generally *Docket Details: Docket No. E-00000Q-16-0289*, ARIZ. CORP. COMM’N, <http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=19621#docket-detail-container2> (last visited Mar. 25, 2017).

88. Letter from Andy Tobin, Comm’r, Ariz. Corp. Comm’n to Docket Control (Dec. 9, 2016).

89. *Id.* at 2; Aug. 22 Memorandum, *supra* note 80, at 3.

90. *Id.* at 2.

91. Letter from Doug Little, Chairman, Ariz. Corp. Comm’n, to Docket Control (Mar. 10, 2017).

92. Decision No. 16-01-044, *Decision Adopting Successor to Net Energy Metering Tariff* (Cal. Pub. Utils. Comm’n Jan. 28, 2016), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M158/K181/158181678.pdf>.

93. *Id.* at 86.

94. *Id.* at 14, 119-20.

95. Decision No. 16-04-020, *Decision Adopting Net Energy Metering Bill Credit Estimation Methodology for Generating Facilities Paired with Small Storage Devices*, at 2 (Cal. Pub. Utils. Comm’n April 21, 2016), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M161/K480/161480050.PDF>.

96. *Id.*

facilities using CPUC-approved tools.<sup>97</sup> Any export by the customer's system which exceeds the monthly limit would not be eligible for net metering credits.<sup>98</sup>

### 3. Colorado

On June 6, 2016, Governor Hickenlooper signed into law House Bill 16-171 (H.B. 171), which modified pre-existing rules concerning the New Energy Improvement District, an entity charged with establishing, developing, financing, and administering a new energy improvement program in the state.<sup>99</sup> Specifically, H.B. 171 requires: 1) the county treasurer to retain a 1% collection fee; 2) allows counties to revoke their authorization for the program, while meeting obligations to borrowers; 3) assesses an interest fee on delinquent payments; 4) repeals a prohibition that barred county assessors from using energy improvements to increase a property's assessed value; and 5) repeals the district's authority to initiate foreclosure in cases of delinquent payments.<sup>100</sup>

### 4. Hawaii

#### a. Distributed Energy Resources

The Hawaii Public Utilities Commission (Hawaii PUC) has indicated that evolution in distributed energy resource (DER) policies is essential given the extraordinary level of distributed renewable energy already achieved in Hawaii and the State's commitment to meet a 100% renewable portfolio standard by 2045.<sup>101</sup> In October 2015, the Hawaii PUC issued Order No. 33258 and established a transitional market structure for DER.<sup>102</sup> In December 2016, by Order No. 34206, the Hawaii PUC established a statement of issues for Phase II of the proceeding.<sup>103</sup> The Hawaii PUC has stated its view that Phase II will encompass two parallel tracks for investigation: a "technical" track and a "market" track.<sup>104</sup> Phase II will continue a stakeholder process to develop a longer-term, competitive market structure for maximizing the benefits of DER in Hawaii.<sup>105</sup>

97. *Id.* at 10.

98. *Id.*

99. S.B. 16-171, 2016 Reg. Sess., 2 (Colo. 2016), [http://www.leg.state.co.us/clics/clics2016a/csl.nsf/fs.B.ill-cont3/8DF0A4AF41A4ADD687257F48005840C7?open&file=171\\_enr.pdf](http://www.leg.state.co.us/clics/clics2016a/csl.nsf/fs.B.ill-cont3/8DF0A4AF41A4ADD687257F48005840C7?open&file=171_enr.pdf).

100. *Id.* at 2, 4-6, 9.

101. See HAW. REV. STAT. § 269-92 (a)(6) (2016).

102. See Order No. 33258, *Instituting a Proceeding To Investigate Distributed Energy Resource Policy*, Docket No. 2014-0192 (Haw. Pub. Utils. Comm'n 2015), <http://dms.puc.hawaii.gov/dms/DocumentViewer?pid=A1001001A15J13B15422F90464>.

103. See Order No. 34206, *Instituting a Proceeding To Investigate Distributed Energy Resource Policy*, Docket No. 2014-0192 (Haw. Pub. Utils. Comm'n 2016), [http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document\\_id=91+3+ICM4+LSDB15+PC\\_DocketReport59+26+A1001001A16L12B20616G4893618+A16L12B54654B406451+14+1960](http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSDB15+PC_DocketReport59+26+A1001001A16L12B20616G4893618+A16L12B54654B406451+14+1960).

104. *Id.* at 16.

105. See Order No. 33958, *Instituting a Proceeding To Investigate Distributed Energy Resource Policy*, Docket No. 2014-0192, at 3 (Haw. Pub. Utils. Comm'n 2016), [http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document\\_id=91+3+ICM4+LSDB15+PC\\_DocketReport59+26+A1001001A16L12B20616G4893618+A16L12B54654B406451+14+1960](http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSDB15+PC_DocketReport59+26+A1001001A16L12B20616G4893618+A16L12B54654B406451+14+1960).

In July 2016, the Hawaii PUC directed Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Ltd. (collectively HECO Companies), to begin DER program implementation before the end of calendar year 2016, given the expected value from DER to both participating and non-participating customers, as well as the potential for DER to enable further renewables integration in accordance with the State's energy goals.<sup>106</sup> The HECO Companies commenced demonstration phase projects in December 2016 with a revised DER Portfolio filing to be submitted in February 2017.<sup>107</sup> Customer enrollment in the re-designed DER Portfolio is expected in August 2017.<sup>108</sup>

#### b. Community-Based Renewable Energy

In June 2015, the Hawaii State Legislature passed Act 100 to establish the Community-Based Renewable Energy (CBRE) Program to make the benefits of renewable energy generation more accessible to a greater number of Hawaii residents.<sup>109</sup> In June 2016, the Hawaii PUC provided a staff-prepared draft proposal for a CBRE Program, recommending key components for the electric utilities' CBRE tariffs.<sup>110</sup>

#### 5. Idaho

Idaho Power Company submitted a proposal to the Idaho Public Utilities Commission (IPUC) requesting authorization to implement an optional Community Solar Pilot Program.<sup>111</sup> The IPUC accepted the proposal after Idaho Power reached a stipulated settlement with interested parties.<sup>112</sup> In approving the proposal, the IPUC noted that “[t]he record demonstrates that there is great interest and enthusiasm for the Company's proposed Community Solar Pilot Program.”<sup>113</sup> The Idaho Power proposal provides that Idaho Power will build a 500 kW single-

106. See Order No. 33835, *Admitting Intervenors & Participants, Identifying Observations & Concerns, Outlining an Initial Statement of Issues, and Establishing a Schedule of Proceedings*, Docket No. 2015-0412, at 3-4 (Haw. Pub. Utils. Comm'n 2016), [http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document\\_id=91+3+ICM4+LSDB15+PC\\_DocketReport59+26+A1001001A16G28B54848G8285318+A16G29B15600C601941+14+1960](http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSDB15+PC_DocketReport59+26+A1001001A16G28B54848G8285318+A16G29B15600C601941+14+1960).

107. See Order No. 33835, *In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc., and Maui Elec. Co., Ltd., Admitting Intervenors and Participants, Identifying Observations and Concerns, Outlining an Initial Statement of Issues, and Establishing a Schedule of Proceedings, In re Public Utilities Commission*, Docket No. 2015-0412, at 2 (Haw. Pub. Utils. Comm'n July 28, 2016), <http://dms.puc.hawaii.gov/dms/DocumentViewer?pid=A1001001A16G28B54848G82853>.

108. *Id.* at 3.

109. See S.B. 1050, 28th Legis., 2<sup>nd</sup> Spec. Sess. (Haw. 2015) (codified as H.R.S. § 269-27.4).

110. See Order No. 33751, *In re Hawaiian Elec. Co., Inc., Hawaii Elec. Light Co., Inc. Maui Elec. Co., Ltd., and Kauai Island Util. Coop., For Approval to Establish a Rule to Implement a Community-Based Renewable Energy Program and Tariff and Other Related Matters, In re Public Utilities Commission*, Docket No. 2015-0389, (Haw. Pub. Utils. Comm'n. June 8, 2016), [http://dms.puc.hawaii.gov/dms/DocketSearch?V\\_DocketNumber=2015-0389&V\\_DocketType=All&V\\_IndustryType=All&V\\_Status=All&AllWordsGroup=0&Quick-Link=1](http://dms.puc.hawaii.gov/dms/DocketSearch?V_DocketNumber=2015-0389&V_DocketType=All&V_IndustryType=All&V_Status=All&AllWordsGroup=0&Quick-Link=1).

111. Order No. 33638, *In re Idaho Power Company's Application to Approve New Tariff Schedule 63, A Community Solar Pilot Program*, Docket No. IPC-E-16-14, at 10 (Idaho Pub. Utils. Comm'n 2016).

112. *Id.*

113. *Id.*

axis tracking community solar array in southeast Boise.<sup>114</sup> The project will “allow a limited number of [the utility’s] customers the opportunity to voluntarily subscribe to the generation output.”<sup>115</sup> Such participating customers will be required to pay a one-time upfront subscription fee, and, in return, will receive a monthly billing credit for their designated share of the energy produced from the array.<sup>116</sup> Idaho Power anticipates that, if there is sufficient customer enrollment, it could have the project in place by mid-2017.<sup>117</sup>

## 6. Nevada

### a. Net Metering

On December 23, 2015, the Public Utilities Commission of Nevada (PUCN) issued a final order on applications in which Nevada Power Company d/b/a NV Energy, and Sierra Pacific Power Company d/b/a NV Energy (NV Energy), proposed new net energy metering rates for customer-generators within NV Energy’s service territories.<sup>118</sup> The PUCN found that the then-current net metering rates were “not properly aligned with the costs of serving [the utility’s] ratepayers,” and that the cost shift from the rooftop solar customers to the utility’s other customers was unreasonable.<sup>119</sup> The PUCN adopted new net metering rates to eliminate the cost shift over a four year period, effective January 1, 2016.<sup>120</sup> The new rates included increases in the rooftop solar customers’ fixed Basic Service monthly charge, and decreases in the amount of the credit paid to customers for net excess electricity from the retail rate to a value-based rate.<sup>121</sup>

The PUCN directed that all customer-generators would be served under the new net metering tariff (NEM2 rate).<sup>122</sup> Existing customers under the “NEM1” net metering tariff would not be “grandfathered” under those rates.<sup>123</sup> This was the first decision by a state utilities commission not to grandfather a utility’s existing net metering customers under the rates in effect prior to the effective date of new net metering rates. The Alliance for Solar Choice, Vote Solar, and the Bureau of Consumer Protection filed petitions for rehearing and reconsideration challenging the PUCN’s failure to grandfather existing customers and the reasonableness of the NEM2 rates.

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114. Idaho Power Corp. Application for Approval of New Tariff Schedule 63--A Community Solar Pilot Program, Idaho Pub. Utils. Comm’n, Docket No. IPC-E-16-14, at 1 (Idaho Pub. Utils. Comm’n June 22, 2016).

115. *Id.*

116. *Id.*

117. *Id.* at 2.

118. Order, *Application of Nevada Power Company d/b/a NV Energy for Approval of a Cost-of-Service Study and New Metering Benefits*, Docket Nos. 15-07041, 15-07042 (Nev. Pub. Utils. Comm’n Dec. 22, 2015).

119. *Id.* at P 181.

120. *Id.* at P 197.

121. *Id.* at PP 186-95.

122. *Id.* at P 108.

123. Order, *Application of Nevada Power Company d/b/a NV Energy for Approval of a Cost-of-Service Study and New Metering Benefits*, Docket Nos. 15-07041, 15-07042 at P 108 (Nev. Pub. Utils. Comm’n Dec. 22, 2015).

On January 25, 2016, the PUCN issued an order reopening the proceedings for the taking of additional evidence on the issue of grandfathering NEM1 customers.<sup>124</sup> The order found the evidence was “inadequate” as a base for implementing a grandfathering program, noting that a grandfathering program would preserve a “substantial subsidy.”<sup>125</sup> The PUCN received supplemental testimony from the parties and convened a hearing on February 8, 2016.

On February 12, 2016, the PUCN issued an Order on Reconsideration and Rehearing and a Modified Final Order (February 12 Orders). The February 12 Orders affirmed the decision that no net metering customers would be grandfathered.<sup>126</sup> In the Modified Final Order, the PUCN directed that the NEM2 rates would be phased in over a twelve year period instead of only four years.<sup>127</sup>

Solar industry representatives filed petitions for judicial review of the PUCN orders in Nevada district courts.<sup>128</sup> On September 12, 2016, the First Judicial District Court of the State of Nevada in and for Carson City issued an Order Granting in Part and Denying in Part the petition for judicial review filed by Vote Solar.<sup>129</sup> The District Court overturned the PUCN orders insofar as they affected NV Energy’s existing net metering customers (the NEM1 customers).<sup>130</sup> The District Court determined that the PUCN lacked subject matter jurisdiction to hear matters and issue orders on the NEM1 customers’ rate design, because NV Energy’s application did not request new rates for the NEM1 customers, and the PUCN notices of the proceedings did not address the NEM1 rates with any degree of specificity.<sup>131</sup> The District Court concluded that there was a “denial of fairness and due process through inadequate Notice”<sup>132</sup> and that with respect to the NEM1 customers rate design, the PUCN orders violated constitutional due process and Nevada statutes.<sup>133</sup> The District Court upheld the PUCN orders with regard to the NEM2 rates, concluding that petitioners had not established the orders were either contrary to law or arbitrary and capricious, and that the record did not support a finding that any contractual rights were impaired in violation of the Contract Clause of the U.S. Constitution.<sup>134</sup>

On July 27, 2016, NV Energy filed an application with the PUCN requesting approval to grandfather net metering customers that had qualified for the NEM1

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124. *Id.*

125. *Id.* at P 8.

126. Modified Final Order, *Application of Nevada Power Company d/b/a NV Energy for Approval of a Cost-of-Service Study and New Metering Benefits*, Docket Nos. 15-07041, 15-07042 at P 91 (Nev. Pub. Utils. Comm’n Feb. 12, 2016).

127. *Id.* at P 340.

128. Petitions for judicial review were filed by The Alliance for Solar Choice and by Vote Solar.

129. Order Granting in Part and Denying in Part Petition for Judicial Review, *Vote Solar v. Pub. Utils. Comm’n*, Docket No. 16 OC 00052 1B (1st Jud. Dist. Ct. of Nevada for Carson City Sept. 12, 2016) [hereinafter *Vote Solar*].

130. *Id.* at 15.

131. *Id.* at 12.

132. *Id.*

133. *Id.* at 16.

134. *Vote Solar*, *supra* note 129, at 15.

rate under a new net metering tariff rider.<sup>135</sup> On September 16, 2016, the PUCN approved a stipulation among NV Energy and the parties (the PUCN Staff, the Bureau of Consumer Protection, and SolarCity) on the grandfathering program. The separate grandfathering tariff rider would be for customers who had already interconnected net metering systems or who had not yet interconnected but had a valid application pending as of December 31, 2015.<sup>136</sup> For a period of twenty years, ending on November 30, 2036, grandfathered customers would not be subject to NEM2 charges and would receive credits for net excess electricity at the retail rate.<sup>137</sup>

On December 28, 2016, the PUCN issued an order in Sierra Pacific Power Company d/b/a NV Energy's general rate case that 1) grandfathered under the NEM1 rates the rooftop solar customers who installed facilities between January 1 and December 31, 2016 and had not been grandfathered under the PUCN order issued September 16, 2016; and 2) authorized an additional 6 MW of newly installed rooftop solar in Sierra Pacific Power's service territory under the NEM1 rates beginning January 1, 2017 through November 30, 2036.<sup>138</sup> The PUCN observed that the Modified Final Order "all but crushed the rooftop solar industry in Northern Nevada . . . ."<sup>139</sup> This result was "incongruous with the policy of the State of Nevada, the intent of S.B. 374, and the public interest."<sup>140</sup> Based upon the evidence presented in the Sierra Pacific Power case including a Marginal Cost of Service Study, the PUCN found that the NEM1 rate did not result in the "unreasonable" cost shift from net metering customers to other Sierra Pacific Power ratepayers that the PUCN was required to remedy under S.B. 374. The "unique facts" of the case demonstrated "no discernable increase to the average monthly bill" and an anticipated cost decrease of \$0.01/month for an average residential customer.<sup>141</sup> In addition, the PUCN determined that the value-based methodology for the credits net metering customers would receive for excess electricity did not fully account for all of the facts and policies that a valuation analysis should consider.<sup>142</sup> The PUCN decided not to rule on a new credit methodology in this Order; instead, the PUCN ordered an investigation opened to consider a universally-acceptable methodology for valuation of NEM rooftop solar in Nevada to be used in future proceedings.<sup>143</sup>

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135. Application of NV Energy Schedule NMR-A, Docket Nos. 16-07028, 16-07029 (Nev. Pub. Utils. Comm'n 2016).

136. *Id.* at 4.

137. *Id.* at 5.

138. *Order Granting in Part and Denying in Part General Rate Application by Sierra Pacific Power*, Docket Nos. 16-06006, 16-06007, 16-06008, 16-06009, at 56 (Nev. Pub. Utils. Comm'n 2016) [hereinafter *Sierra Order*].

139. *Id.* at 38.

140. *Id.*

141. *Id.* at 52, 60.

142. *Id.* at 55. The PUCN also "disavowed" the Modified Final Order's "gradualism" approach that implemented the NEM2 rate changes in "laddered" increments, as "impractical." *Id.* at 55, n.36.

143. *Sierra Order*, *supra* note 138, at 59.



### b. Corporate Procurement

As noted in the report of this committee for 2015, large electricity customers in Nevada had applied to the PUCN to exit as customers of NV Energy's bundled retail electric service and purchase energy, capacity, and ancillary services from other sources.<sup>144</sup> In 2016, the PUCN approved applications from four of NV Energy's large customers to procure their own power supplies. Each exiting customer is responsible for payment of "impact" fees ranging from approximately \$17 million to \$87 million.<sup>145</sup>

On February 2, 2016, the PUCN approved Renewable Energy Agreements between Sierra Pacific Power Company d/b/a NV Energy and two of its large commercial customers, Apple, Inc., and Switch, Ltd., in recognition of the customers' corporate objectives to power their new data centers in Northern Nevada with 100% renewable energy.<sup>146</sup> The Renewable Energy Agreements provide that NV Energy will sell and the customers will purchase the portfolio energy credits that NV Energy acquires under long term power purchase agreements with new PV solar projects. The customers will continue to receive bundled retail service from NV Energy under its "GreenEnergy" tariff rider.<sup>147</sup> The PUCN approved a similar Renewable Energy Agreement between Nevada Power Company d/b/a NV Energy and the City of Las Vegas which would allow the city to achieve its objective to offset a portion of its retail load with renewable energy resources.<sup>148</sup>

### 7. New Mexico

To incentivize Facebook to locate a new \$250 million facility in New Mexico, the New Mexico Public Regulation Commission (NM PRC) approved a purchase power agreement, a special service rate, a New Green Energy Rider, and certain other approvals requested by Public Service Company of New Mexico (PNM).<sup>149</sup> Facebook asked PNM for a stable, multi-year commitment of renewable power sufficient to power the entire new facility.<sup>150</sup> Facebook's request is consistent with Facebook's goal to use 50% renewable power company-wide.<sup>151</sup>

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144. *Report of the Renewable Energy Committee*, 37 ENERGY L. J. 101, 116 (2016).

145. Modified Final Order, Docket No. 15-05017 (Nev. Pub. Utils. Comm'n 2016); Modified Final Order, Docket No. 15-05006 (Nev. Pub. Utils. Comm'n 2016); Modified Final Order, Docket No. 15-05002 (Nev. Pub. Utils. Comm'n 2016); Order, Docket No. 16-09023 (Nev. Pub. Utils. Comm'n 2016) [hereinafter Switch Order].

146. Order, Docket Nos. 15-11025, 15-11027, 15-11028, 15-11029 (Nev. Pub. Utils. Comm'n 2016) [hereinafter Apple Order]. Subsequently, the PUCN approved a Stipulation with respect to Switch, Ltd. that removed the requirement that Switch stay a fully bundled customer of NV Energy from its Renewable Energy Agreement and specified terms under which Switch would be permitted to purchase its energy requirements from a new provider. *See generally Switch Order*, *supra* note 145.

147. *Apple Order*, *supra* note 146, at Att. 1 p. 3.

148. Order, Docket No. 15-11026 (Nev. Pub. Utils. Comm'n 2016).

149. *In re Application of Public Service Company of New Mexico*, Case No. 16-00191-UT (N.M. Pub. Reg. Comm'n Aug. 17, 2016).

150. *Id.* at 6.

151. Ehren Goossens, *Facebook Doubles Renewable-Energy Target to 50% by End of 2018*, BLOOMBERG TECH. (July 7, 2015), <https://www.bloomberg.com/news/articles/2015-07-07/facebook-doubles-renewable-energy-target-to-50-by-end-of-2018>.

In this special contractual arrangement, Facebook agreed to cover PNM's incremental costs to serve Facebook, as well as make some contribution to PNM's fixed production and transmission costs.<sup>152</sup> A key component is a Production Charge of \$0.0231074 per kWh for the first ten years.<sup>153</sup> If the renewable energy facilities added to supply Facebook provide more energy than is needed for that purpose, PNM is authorized to use that energy to serve other customers.<sup>154</sup> No party opposed approval of this Facebook proposal.<sup>155</sup> The NM PRC found that "... based on the totality of the Application and viewing the transaction as a whole, PNM's Application is in the public interest . . . ."<sup>156</sup>

## 8. Oregon

### a. Renewable Portfolio Requirement

In March 2016, Governor Kate Brown signed Senate Bill 1547 into law. S.B. 1547 increases Oregon's renewable portfolio requirement to 50% by 2040, and requires utilities to cease using coal-fired electricity for power supply by 2030.<sup>157</sup> House Bill 4037 also became law on a parallel track, and provides a \$0.005/kWh incentive for solar development between 2 MW and 10 MW for up to five years.<sup>158</sup> Projects must be deemed qualified by the Oregon Business Development Department by the earlier of either January 2, 2017, or when the program reaches its 150 MW cap.

### b. Regulatory Developments

The Oregon Public Utilities Commission (OPUC) worked towards implementation of 2015's H.B. 2193, which required electric utilities to provide energy storage development proposals to the OPUC by January 1, 2018.<sup>159</sup> In August the OPUC issued proposed guidelines for storage projects to be submitted under H.B. 2193, and the OPUC indicated that it will issue final guidelines in January 2017 based upon comments received.<sup>160</sup> The OPUC also filed a report with the Oregon legislature in October on solar incentives, recommending adoption of taxpayer-funded incentive programs, alignment of net metering and community solar programs, and using a state Energy Trust to specifically fund solar projects providing unique benefits.<sup>161</sup> Finally, the OPUC followed its staff's recommendation, and elected not to approve Voluntary Renewable Energy Tariffs for nonresidential customers of investor-owned utilities.<sup>162</sup> 2015 legislation had required the OPUC to

152. *In re Application of Public Service Company of New Mexico*, Case No. 16-00191-UT at 14 (N.M. Pub. Reg. Comm'n Aug. 17, 2016).

153. *Id.* at 16.

154. *Id.* at 42-43.

155. *Id.* at 41.

156. *Id.*

157. S.B. 1547, 78th Leg. Assemb., Reg. Sess. (Or. 2016).

158. H.R.B. 4037, 78th Leg. Assemb., Reg. Sess. (Or. 2016).

159. H.R.B. 2193, 78th Leg. Assemb., Reg. Sess. (Or. 2015).

160. Order Seeking Comments on Draft Guidelines, UM 1751 (Or. Pub. Util. Comm'n 2016).

161. OR. PUB. UTIL. COMM'N, H.B. 2941 SOLAR INCENTIVES REPORT 29 (2016).

162. Order Adopting Staff Recommendation, UM-1690 (Or. Pub. Util. Comm'n 2016).

consider these tariffs, but the inquiry was closed due to a lack of interest from customers given the restrictions proposed by the commission and its staff.<sup>163</sup>

## 9. Utah

Utah expanded its sales tax exemption for equipment used in electric generation to include technologies defined as “alternative,” like nuclear fuel, waste energy production, and certain types of fossil fuels as well as equipment used in renewable technologies like solar, wind, and geothermal.<sup>164</sup> The exemption eliminates the state sales tax for purchased or leased equipment used in facilities generating a minimum of 2 MW of electric power or increasing the facilities’ capacity by at least 1 MW using the eligible equipment.

## 10. Washington

### a. Energy Independence Act

Washington’s Energy Independence Act (EIA), as revised in 2015, “requires qualifying electric utilities to obtain a certain percentage of their electricity from eligible renewable resources, including wind, solar, and hydro power. As part of the EIA requirements, Avista, Pacific Power, and Puget Sound Energy filed reports detailing their renewable portfolios” with the Washington Utilities and Transportation Commission (WA UTC). The WA UTC found that each of the subject utilities had successfully complied with the standard and was on track to achieve the renewable energy target of “supply[ing] at least 9% of [their] electric load for 2016 through renewable sources.”<sup>165</sup> “Each company will file a final compliance report [with the WA UTC] by 2018 showing exactly which resources were used to meet its target, and [to] request a [final] determination that the utility [had] fully complied with [the requirements of the EIA].”<sup>166</sup>

### b. Renewable Energy Program

The WA UTC approved Puget Sound Energy’s renewable energy program proposal, which gives “large retail and local government electric customers who purchase more than ten million kWh per year the option to purchase all of their energy from specific renewable energy sources. The program is capped at 75 [MW].”<sup>167</sup>

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163. *Id.* at 8.

164. UTAH CODE ANN. 59-12-104 § 47(a) (West 2016).

165. Press Release, Wash. Utils. & Transp. Comm’n, Washington Electric Companies Surpass Conservation Targets; On Track to Meet 2016 Renewable Energy Targets (Oct. 6, 2016).

166. *Id.*

167. Press Release, Wash. Utils. & Transp. Comm’n, Washington Energy Regulators Approve Innovative Renewable Energy Program (Sept. 29, 2016).

### C. *South*

#### 1. Mississippi

Mississippi's legislature revised the requirements that the state Public Service Commission (MS PSC) can place on net metering programs.<sup>168</sup> While the MS PSC can require co-ops to adopt net metering or energy efficiency programs, the MS PSC may not "establish . . . level[s] of expenditures, compensation, or credits" for these programs. The legislative action was in response to an MS PSC order that became effective at the beginning of 2016, requiring all electric utilities in Mississippi, including cooperatives, to offer net metering.<sup>169</sup>

#### 2. South Carolina

##### a. Revised Renewable Interconnection Standard

In April 2016, the South Carolina Public Service Commission (SC PSC) approved a revised interconnection standard for the "interconnection of renewable energy facilities and other nonutility-owned generation [of capacity less than] 2,000 kW to electric[ ] utilit[ies'] distribution system[s]."<sup>170</sup> Any generator seeking to interconnect either to net meter, or to sell its full output to the utility, will seek interconnection under the standard.<sup>171</sup> The revised standard offers a streamlined interconnection process for certain solar PV generators of 20 kW or less, and reserves circuit capacity for generators with less than 20 kW capacity to ensure that smaller distributed energy facilities dedicated access to the utility's system, up to a certain level of penetration.<sup>172</sup> It also offers an optional "fast track" screening review process for certain PV generating facilities up to 1,000 kW regardless of location, and 2,000 kW where the facility agrees to interconnect to a higher-voltage distribution line and is no more than 2.5 miles from the nearest substation.<sup>173</sup> Generators that do not qualify for the fast track must pay a \$10,000 plus \$1/kW deposit to fund the interconnection study process and, once the interconnection agreement is signed, pay or provide financial security to fund any necessary interconnection facilities or system upgrades.<sup>174</sup> The utilities also agreed to make their respective interconnection queues public on their web sites, and to provide semi-annual reports to the SC PSC regarding the status of the queue.<sup>175</sup>

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168. *See generally* H.R.B. 1139, 2016 Leg., Reg. Sess. (Miss. 2016).

169. Order Adopting Net Metering Rule, Docket No. 2011-AD-2 (Miss. Pub. Service Comm'n 2016).

170. Order Adopting Interconnection Standard and Supplemental Provisions, Docket No. 2015-362-E (S.C. Pub. Serv. Comm'n 2016).

171. *Id.* at 6.

172. *Id.*

173. *Id.*

174. *Id.* at 7.

175. Order Adopting Interconnection Standard and Supplemental Provisions, Docket No. 2015-362-E at 7-8 (S.C. Pub. Serv. Comm'n 2016).

### b. Renewable Energy Tax Credits

In February 2016, the General Assembly passed, and the Governor signed, expansions of both the personal and corporate Solar Energy, Small Hydropower, and Geothermal Tax Credits.<sup>176</sup> Under the law, taxpayers may claim a credit of 25% of the costs of purchasing and installing a solar energy system or small hydropower system for heating water, space heating, air cooling, energy-efficient daylighting, heat reclamation, energy-efficient demand response, or the generation of electricity in a building owned by the taxpayer. The scope of the credit was expanded in 2009 to include small hydropower systems installed after July 1, 2009. The 2016 amendment through H.B. 3874<sup>177</sup> expanded the credit's scope to include geothermal energy projects installed between January 1, 2016 and January 1, 2019. The maximum credit a taxpayer may take in any one tax year is \$3,500 for each facility, or 50% of the taxpayer's tax liability for that taxable year, whichever is less.<sup>178</sup> Unused credit, or credit that exceeds the annual cap, may be carried forward for ten years.<sup>179</sup>

### D. Mid-Atlantic

#### 1. Delaware

In August 2016 an additional \$750,000 was allocated to Delaware's Solar Renewable Energy Credit (SREC) program.<sup>180</sup> Administered by the Delaware Division of Energy and Climate and the state's Sustainable Energy Utility (DESEU), the program has a total available funding of \$3,750,000 and offers a standard one-time payment of \$450 per kW for the first twenty years of SRECs created by the system.<sup>181</sup> As of August 2016, DESEU has disbursed \$1.87 million of funds and has received requests for another \$1.34 million for systems under construction.<sup>182</sup>

#### 2. District of Columbia

##### a. Renewable Portfolio Standards

In July 2016, the District of Columbia's Mayor, Muriel Bowser, signed into law the Renewable Portfolio Standard Expansion Amendment Act of 2016 (B21-0650).<sup>183</sup> Among other things, the legislation raises the renewable portfolio standard (RPS) from 20% by 2020 to 50% by 2032, increases financial penalties for

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176. *Id.*

177. Gen. B., S.C. Gen. Assem., 121st Sess. 2015-2016 (Mar. 4, 2016), [http://www.scstatehouse.gov/sess121\\_2015-2016/bills/3874.htm](http://www.scstatehouse.gov/sess121_2015-2016/bills/3874.htm).

178. *Id.*

179. *Id.*

180. *Solar Renewable Energy (SREC) Program*, ENERGIZE DEL., <https://www.energizedelaware.org/solar-renewable-energy-srec-program/> (last visited March 20, 2017).

181. *Id.*

182. *Id.*

183. Renewable Portfolio Standard Expansion Amendment Act of 2016, 63 D.C. Reg. 10,138 (Aug. 5, 2016).

electricity suppliers that fail to comply with the RPS for a given year, and establishes a program aimed at reducing by at least 50% the electric bills of 100,000 low-income households by 2032.<sup>184</sup> The law went into effect on October 8, 2016.

b. Interconnection Process and Reporting

On October 17, 2016, the District of Columbia Public Service Commission (DCPSC) issued an order directing the Potomac Electric Power Company (Pepco) to modify its interconnection process and undertake additional reporting requirements.<sup>185</sup> The DCPSC order explained that in 2009 it had promulgated the District of Columbia Small Generator Interconnection Rules (DCSGIR) to set forth procedures and standards for customers with on-site generation to interconnect with Pepco's electric distribution system.<sup>186</sup> The DCPSC order further explained that since promulgating the DCSGIR, it had reviewed Annual Interconnection Reports from Pepco regarding the implementation of interconnection in the District and learned, albeit anecdotally, that customers were facing barriers to participation in interconnection.<sup>187</sup> Accordingly, the DCPSC held a legislative-style hearing on July 21, 2015 to allow Pepco, the Office of the People's Counsel, DC Solar United Neighborhoods, Maryland DC Virginia Solar Energy Industries Association, and other interested stakeholders to address the matter.<sup>188</sup> Focusing on the issues raised in the July 21, 2015 legislative-style hearing and in Pepco's 2015 Annual Interconnection Report, the DCPSC identified several interconnection-related areas for Pepco to provide additional reporting.<sup>189</sup>

First, the DCPSC found that Pepco's Green Power Connection (GPC) team's responsiveness to customers was unacceptable "especially at a time when the District of Columbia is making great strides to promote energy conservation and the use of renewable energy resources" and stressed that it "expects Pepco to make greater efforts to accommodate the growing demand by those District customers who desire to undertake distributed generation."<sup>190</sup> Accordingly, the DCPSC directed Pepco to report the response time to customer calls beginning with its 2016 Annual Interconnection Report and each annual report filed thereafter.<sup>191</sup> Second, the DCPSC noted that the percentage of interconnection applications that missed the approval deadlines increased from 2014 to 2015, and directed Pepco to provide quarterly reports with information on the number of applications for which the approval deadlines have been missed, and to include a remedial plan if there is an increase in the percentage of applications missing the approval deadline from one

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184. *Id.*

185. Order No. 18575, *In re Investigation of Implementation of Interconnection Standards in the Dist. of Columbia* (D.C. Pub. Serv. Comm'n Oct. 17, 2016).

186. *Id.*

187. *Id.* at 19.

188. *Id.* at 3.

189. *Id.* at 4-5.

190. Order No. 18575, *In re Investigation of Implementation of Interconnection Standards in the Dist. of Columbia* (D.C. Pub. Serv. Comm'n Oct. 17, 2016).

191. *Id.* at 20.

quarter to the next.<sup>192</sup> Third, the DCPSC found the number of incomplete interconnection applications to be unacceptably high, and directed Pepco to provide an incomplete application report each quarter, and to include a remedial plan if there is an increase in the percentage of incomplete interconnection applications from one quarter to the next.<sup>193</sup> Last, the DCPSC directed Pepco to provide a list of the names, locations, fuel type, and kW capacities for all currently interconnected solar and non-solar facilities, explaining that such information will facilitate the DCPSC's internal monitoring of small generation facilities, which request renewable energy credit certification and interconnection.<sup>194</sup> The DCPSC also required Pepco to make certain other ministerial modifications to its website to make the interconnection application process more user-friendly.<sup>195</sup>

### 3. Maryland

#### a. Community Solar Pilot Program

On June 14, 2016, the Maryland Public Service Commission (Maryland PSC) approved final regulations to establish a community solar pilot program in Maryland.<sup>196</sup> The three-year pilot program for community solar projects was established by legislation enacted in May 2015 and the regulations were considered in a rulemaking proceeding initiated in November 2015 in Docket No. RM56.<sup>197</sup> Among other things, the regulations will provide access to solar-generated electricity for all Maryland customers without requiring property ownership and will provide incentives to solar companies to provide service to low- and moderate-income customers.<sup>198</sup> In addition, Maryland PSC staff will collect data to study the impact on Maryland's electricity grid over the course of the three-year pilot program.<sup>199</sup> The regulations became effective on July 18, 2016.<sup>200</sup>

#### b. Microgrid Proceeding

On July 19, 2016, the Maryland PSC issued an order denying a proposal filed by Baltimore Gas and Electric Company (BGE) to construct, operate and recover costs associated with two public purpose microgrids located within BGE's electric distribution service territory (Proposal).<sup>201</sup> The Maryland PSC explained that "each microgrid location would feature a small scale, natural gas-fired generation facility, producing between 2-3 MWs of power to support clusters of "critical service" business establishments within the designated footprint during significant or

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192. *Id.*

193. *Id.*

194. *Id.*

195. Order No. 18575, *In re Investigation of Implementation of Interconnection Standards in the Dist. of Columbia* (D.C. Pub. Serv. Comm'n Oct. 17, 2016).

196. H.R.B. 1087, Community Solar Energy Generation Systems, 43 Md. Reg. 781 (July 8, 2016).

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. Order No. 87669, *In re the Balt. Gas & Elec. Co.'s Request for Approval of its Pub. Purpose Microgrid Proposal* (Md. Pub. Serv. Comm'n July 19, 2016).

extended outages of the larger distribution system” and that “[i]f and when an extended outage occurs, the microgrid would island itself from the larger distribution system and provide electricity to these critical business assets and enable their continued operation.”<sup>202</sup> Among the reasons for denying the Proposal, the Maryland PSC stated that “[t]he Proposal does not contemplate any renewable energy options, CHP, or energy storage to diversify BGE’s generation portfolio” and that “[i]n the absence of diversification, the Proposal cannot capture the full breadth of potential benefits that public purpose microgrids could offer through fuel-diverse generation.”<sup>203</sup> The Maryland PSC acknowledged that “the question of which exact sources of generation should be included in a microgrid generation portfolio is fact-specific to a proposal,” but expressed its disappointment that the Proposal did not contain, “at least in part, forward-looking generation and storage concepts to test whether these elements could work in Maryland and be replicated in future microgrid projects.”<sup>204</sup> The Maryland PSC denied the Proposal without prejudice to BGE resubmitting other public purpose microgrid proposals in the future.

### c. Offshore Wind

On November 22, 2016, the Maryland PSC issued an order commencing a docketed proceeding “to conduct a multi-part review to evaluate and compare the [offshore wind] project applications [proposed by US Wind, Inc., a subsidiary of Toto Holding SpA (US Wind) and Skipjack Offshore Wind, LLC, a subsidiary of Deepwater Wind Holdings, LLC (Skipjack)]”.<sup>205</sup> The Maryland PSC order noted that it had commenced the Maryland Offshore Wind Project Application Period which was initially scheduled to conclude on August 23, 2016, but was extended until November 18, 2016.<sup>206</sup> It further stated that US Wind and Skipjack submitted the only two applications, and that their applications were administratively complete and met the requisite statutory requirements, thereby requiring the Maryland PSC to commence the docketed proceedings.<sup>207</sup> The hearings for the proceedings were scheduled for March 2017.

## 4. New Jersey

Beginning March 7, 2016, New Jersey adopted the 2015 International Energy Conservation Code (IECC) with amendments to the New Jersey Uniform Construction Code.<sup>208</sup> These standards will apply to all buildings in the state with limited exceptions for health care facilities, sewage and water treatment facilities, and commercial farms.<sup>209</sup> The energy cost savings derived from the new IECC

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202. *Id.* at 2.

203. *Id.* at 14.

204. *Id.*

205. Order No. 87898, *In re the Applications of US Wind, Inc., and Skipjack Offshore Wind, LLC for a Proposed Offshore Wind Project(s) Pursuant to the Maryland Offshore Wind Energy Act of 2013* (Md. Pub. Serv. Comm’n Nov. 22, 2016).

206. *Id.* at 1-2.

207. *Id.* at 2.

208. N.J. ADMIN CODE 5:23-3 (2016).

209. *Id.*



code are estimated by the U.S. Department of Energy to be on the order of nearly \$195 million annually by 2030.<sup>210</sup>

## 5. North Carolina

### a. Renewable Portfolio Standard

In October 2016, the North Carolina Utilities Commission (NCUC) issued an order further modifying the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (REPS) requirements for utilities to procure energy derived from swine and poultry waste.<sup>211</sup> The changes delay for an additional year the deadlines for commencing compliance with the swine waste set-aside requirement and meeting the increased poultry waste requirement.<sup>212</sup> Beginning with calendar years 2017-2018, North Carolina electric utilities must procure 0.07% of their energy requirements from swine waste resources, with that percentage rising to 0.14% in calendar years 2018-2021 and to 0.20% in 2022 and afterward.<sup>213</sup> Additionally, the requirement to procure 170,000 MWh of electric energy from poultry waste resources will remain the same for calendar year 2016, with the required increase to 700,000 MWh pushed back to 2017 and the subsequent increase to 900,000 MWh pushed back to 2018 and afterward.<sup>214</sup> Utilities are also now permitted to bank swine Renewable Energy Credits (RECs) for use in subsequent years, and to replace compliance with the swine waste set-aside requirement in 2016 with other compliance measures allowed under the REPS, including using excess solar RECs.<sup>215</sup>

In June 2016, the NCUC clarified that a topping cycle combined heat and power (CHP) system does not constitute an “energy efficiency measure” under the state’s REPS statute, except where the secondary, waste heat component of the system is used to produce energy.<sup>216</sup> The NCUC ruled that under the statute’s definition of CHP system, for purposes of being deemed an energy efficiency measure, the electricity or useful, measurable thermal or mechanical energy must be produced from waste heat.<sup>217</sup> It noted that, in contrast to a bottoming cycle CHP, in which the waste heat from an industrial process is used to create electricity and potentially thermal energy, in a topping cycle CHP system the electricity is not produced from waste heat, but rather is produced from a resource like natural gas, which also produces waste heat that is used to produce thermal or mechanical energy, and that it is only the secondary thermal or mechanical energy that is produced from the waste heat that qualifies as an energy efficiency measure under the

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210. *Building Energy Codes Program: New Jersey*, DEP’T ENERGY, <https://www.energycodes.gov/adoption/states/new-jersey> (last visited March 20, 2017).

211. *Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief*, Docket No. E-100 (N.C. Utils. Comm’n Oct. 22, 2016).

212. *Id.* at 2.

213. *Id.* at 6.

214. *Id.*

215. *Id.*

216. *Order on NCSEA’s Request*, Docket No. E-100 at 9-11 (N.C. Utils. Comm’n June 6, 2016).

217. *Id.* at 9.

statute.<sup>218</sup> The North Carolina Sustainable Energy Association has appealed the NCUC's decision to the state Court of Appeals, which had not ruled on the matter by the end of 2016.<sup>219</sup>

#### b. Solar PV Power Purchase Agreement Holding

In April 2016 the NCUC ruled that an entity that arranged to have a solar PV generating system installed on the roof of another entity (in this case a church) and entered into a power purchase agreement (PPA) with the church, under which the church would pay a fixed price per kWh depending on the electricity used from the system, was unlawfully operating as a public utility under North Carolina law.<sup>220</sup> Specifically, the NCUC found that the sale of power under the PPA constituted the provision of electric service "to or for the public," thereby meeting the definition of "public utility" contained in the state Public Utilities Act.<sup>221</sup> The NCUC emphasized the fact that North Carolina has expressly decided to maintain regulated monopoly electric public utilities, and that a decision that the PPA sale would not constitute public utility activity would open the door to third party sales of power in contravention of North Carolina law and to the detriment of customers who would be left behind.<sup>222</sup> The petitioner has sought review of the decision to the North Carolina Court of Appeals. As of the end of 2016, briefs had been filed, but no decision issued.<sup>223</sup>

### 6. Pennsylvania

#### a. Alternative Energy Portfolio Standards Act Update

On October 27, 2016, the Pennsylvania Public Utility Commission (PaPUC) voted to implement a second amended final rulemaking order relating to the Alternative Energy Portfolio Standards Act (AEPS Act) of 2004.<sup>224</sup> The revised rule-

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218. *Id.* at 10.

219. *North Carolina ex rel. Utils. Comm'n*, No. 12A14 (N.C. Jan. 23, 2015).

220. Order Issuing Declaratory Ruling, *In re Petition by North Carolina Waste Awareness and Reduction Network for a Declaratory Ruling Regarding Solar Facility Financing Arrangements and Status as a Public Utility*, Docket No. SP-100, Sub 31 (N.C. Utils. Comm'n Apr. 15, 2016).

221. *Id.* at 3; N.C. GEN. STAT. § 62-3(23)(a)(1).

222. Order Issuing Declaratory Ruling, *In re Petition by North Carolina Waste Awareness and Reduction Network for a Declaratory Ruling Regarding Solar Facility Financing Arrangements and Status as a Public Utility*, Docket No. SP-100, Sub 31 at 11 (N.C. Utils. Comm'n Apr. 15, 2016).

223. Brief of Amici Curiae, *State of North Carolina ex rel. Utils. Comm'n v. N.C. Waste Awareness & Reduction Network*, SP-100, SUB 31 (Oct. 2016).

224. Proposed Rulemaking Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 (Pa. Pub. Util. Comm'n Apr. 23, 2015).

making order adopted by the PaPUC clarifies issues related to net metering, interconnection, and compliance provisions.<sup>225</sup> The proposed regulations were initially approved by the PaPUC in February 2016,<sup>226</sup> and were revised in June 2016.<sup>227</sup>

The new regulations address:

(1) the addition of definitions for aggregator, default service provider, utility, grid emergencies, microgrids and moving water impoundments; (2) revisions to net metering rules and inclusion of a process for electric distribution companies to seek [PaPUC] approval net meter alternative energy systems with a nameplate capacity of 500 kilowatts or greater; (3) clarification of the virtual meter aggregation and independent load language; (4) clarification of net metering compensation rules for customer-generators receiving generation service from electric distribution companies and default service providers; (5) addition of provisions for adjusting Tier I compliance obligations on a quarterly basis to comply with the Act 129 of 2008 amendments; and (6) clarification of the authority given to the program administrator to suspend or revoke the qualification of an alternative energy system and to withhold or retire past, current or future alternative energy credits for violations.<sup>228</sup>

The regulations were published in the Pennsylvania Bulletin on November 19, 2016.<sup>229</sup>

#### b. Sunrise Energy Case

In *Sunrise Energy, LLC v. FirstEnergy Corp.*, the Pennsylvania Commonwealth Court held that a dispute over whether Sunrise Energy (Sunrise), a solar facility, qualified as a “customer-generator” under the AEPS Act should be resolved in state court, and was not a dispute subject to the exclusive jurisdiction of the PaPUC.<sup>230</sup> In 2014, West Penn Power Company (West Penn) ceased payments at the full retail price to compare rate for “excess” electricity generated by Sunrise. It was West Penn’s position that Sunrise did not qualify as a “customer-generator” under the AEPS Act due to a lack of customer load at the premises, other than the electricity consumed by the solar facility itself.<sup>231</sup> Sunrise Energy sued for a 1) declaration that it was a “customer-generator” under the AEPS Act entitled to a retail rate for its excess electricity; 2) damages; and 3) breach of contract in state court. West Penn filed Preliminary Objections, arguing that the PaPUC has exclusive jurisdiction over the dispute since it involved a tariffed utility service, net metering, that was part of a regulatory scheme thoroughly regulated by the PaPUC under the AEPS Act.<sup>232</sup> The state trial court concluded that the court of common

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225. Second Amended Rulemaking Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 (Pa. Pub. Util. Comm’n Oct. 27, 2016).

226. Final Rulemaking Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 (Pa. Pub. Util. Comm’n Feb. 11, 2016).

227. Amended Final Rulemaking Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004* (Pa. Pub. Util. Comm’n June 9, 2016).

228. Press Release, Pa. Pub. Util. Comm’n, PUC Implements Alternative Energy Portfolio Standards (Oct. 27, 2016).

229. See generally Pa. Pub. Util. Comm’n, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, 46 Pa. Bull. 7277 (Nov. 19, 2016).

230. *Sunrise Energy, Inc. v. FirstEnergy Corp.* et al., Docket No. 1282 C.D. 2015 (Pa. Commw. Ct. 2016).

231. *Id.* at 3.

232. *Id.* at 7.

pleas had the ability to interpret the definition of “customer-generator” under the AEPS Act.<sup>233</sup> The Commonwealth Court agreed, and held that because the AEPS Act did not explicitly authorize the PaPUC to adjudicate a dispute arising from the AEPS, and because of the nature of Sunrise’s claims, it was not error for the court of common pleas to retain jurisdiction.<sup>234</sup> A request for re-argument of the decision was denied.

## 7. Virginia

### a. Solar Tax Exemptions

In March of 2016, Virginia Governor, Terry McAuliffe, signed into law a bill that provides sales and use tax exemption for large, utility-scale solar generation facilities.<sup>235</sup> “The bill also alters the types of projects of solar photovoltaic systems that qualify for the real and personal property tax exemptions on photovoltaic equipment and facilities.” Either a 100% or an 80% exemption will apply depending on the size of the project, when its interconnection request was filed, and certain other criteria such as whether the project serves a public institution of higher education or a private college.<sup>236</sup> The law became effective on January 1, 2017.<sup>237</sup>

### b. New Solar Projects

On June 30, 2016, the Virginia State Corporation Commission (VSCC) issued an order approving Dominion Virginia Power’s application to construct the 17 MW Scott Solar Facility, the 20 MW Whitehouse Solar Facility, and the 19 MW Woodland Solar Facility (collectively 2016 Solar Projects).<sup>238</sup> The VSCC also approved a rate adjustment clause which allows Dominion Virginia Power to recover costs associated with the development of the Projects, including projected construction work in progress and any associated allowance for funds used during construction.<sup>239</sup> The 2016 Solar Projects began commercial operations in December 2016.<sup>240</sup>

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233. *Id.*

234. *Id.* at 25.

235. H.R.B. 1305, 2016 Reg. Sess. (Va. 2016), <https://lis.virginia.gov/cgi-bin/legp604.exe?161+sum+H.B.1305> (Solar and Wind Energy Equipment, etc.; Tax Exemptions).

236. *Id.*

237. *Id.*

238. DOMINION VA. POWER, ANNUAL REPORT TO THE STATE CORPORATION COMMISSION ON RENEWABLE ENERGY n.1 (Nov. 1, 2016), [http://www.scc.virginia.gov/pur/renew/dvp\\_renew\\_16.pdf](http://www.scc.virginia.gov/pur/renew/dvp_renew_16.pdf) (last visited Mar. 20, 2017).

239. *Id.* at 19.

240. *Virginia and North Carolina Solar Projects*, DOMINION, <https://www.dom.com/about-us/making-energy/renewables/solar/virginia-and-north-carolina-solar-projects> (last visited Mar. 20, 2017).

### *E. Midwest*

#### 1. Illinois

The Illinois legislature passed the Future Energy Jobs Bill, S.B. 2814, on December 1, 2016.<sup>241</sup> Among other measures, the bill revised the state's renewable portfolio standard to include solar PV generation along with wind generation as the source for a minimum of 75% of the state's renewable energy.<sup>242</sup> It also revised the mechanism by which RPS compliance projects are funded, consolidating three separate funding "buckets" into only one that will be funded by a single line item on energy consumers' electricity bills.<sup>243</sup>

#### 2. Iowa

##### a. Net Metering Decision

On July 19, 2016, the Iowa Utilities Board (IUB) issued an order<sup>244</sup> directing Iowa's two largest investor-owned utilities to file new net metering (distributed generation) tariffs to help the IUB establish policies to expand renewable energy opportunities in Iowa. The tariffs were intended to increase the net metering cap from 500 kW to 1 MW up to 100% of a customer's load, allow all customer classes to net meter to offset kWh but not customer charge or demand charge and provide an annual cash-out of excess credits at the utility's tariffed avoided cost rate.<sup>245</sup> The tariffs were filed by MidAmerican Energy and Interstate Power and Light on August 31, 2016. On September 27, 2016, the IUB issued an order<sup>246</sup> docketing the new net metering tariffs filed and ordered further review. Comments on the proposed tariffs must have been filed on or before October 21, 2016, with utility responses to be filed on or before November 18, 2016.<sup>247</sup> The proceeding remained pending at the end of 2016.

##### b. Iowa Energy Plan

On December 21, 2016, the State of Iowa released its Iowa Energy Plan,<sup>248</sup> a joint initiative of the Iowa Economic Development Authority and the Iowa Department of Transportation which called for increased utilization of utility-scale renewable energy generation in Iowa, and support of distributed renewable energy

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241. S.B. 2814, 2016 Reg. Sess., Gen. Assemb. (Ill. 2016), <http://www.ilga.gov/legislation/99/S.B./PDF/09900S.B.2814enr.pdf>.

242. *Id.*

243. Peter Maloney, *How the Illinois Energy Reform 'Fixed' the State's RPS, Promising a Renewables Boom*, UTILITYDIVE (Dec. 22, 2016), <http://www.utilitydive.com/news/how-the-illinois-energy-reform-fixed-the-states-rps-promising-a-renewab/432877/>.

244. Press Release, Iowa Utils. Bd., Iowa Utilities Board Modernizes Net Metering Opportunities; Encourages Renewable Energy Development Iowa Utilities Board (July 19, 2016), <https://iub.iowa.gov/sites/default/files/files/media/releases/2016/0719-Board-Order-Net-Metering.pdf>.

245. *Id.*

246. *Distributed Generation NOI*, IOWA UTILS. BD., <https://iub.iowa.gov/distributed-generation-noi> (last visited Mar. 20, 2017).

244. *Id.*

248. Home, IOWA ENERGY PLAN, <https://iowaenergyplan.org/> (last visited Mar. 20, 2017).

generation including wind, solar, and other clean energy through the adoption of clean energy goals and adoption of local policy best practice models.

### 3. Minnesota

#### a. Community Solar Gardens

On July 21, 2016, Minnesota Public Utilities Commission (MN PUC) became the first state in the nation to adopt the “value of solar” approach for determining how community solar customers will be paid for the power the projects produce.<sup>249</sup> The MN PUC also maintained a 1 MW size cap for community solar gardens.<sup>250</sup>

#### b. Integrated Resource Plan

On October 13, 2016, MN PUC held its final hearing and unanimously approved Xcel Energy’s fifteen-year Integrated Resource Plan which, among many other things, called for 1,000 MW of wind resources by 2019 and at least 650 MW of solar by 2021 through community solar gardens, or other cost-effective solar.<sup>251</sup>

### 4. Nebraska

On April 13, 2016, the Property Assessed Clean Energy Act<sup>252</sup> was signed into law, allowing municipalities to create clean energy assessment districts. Municipalities that create such districts may enter contracts with qualifying property owners and (if participating) third-party financiers to provide financing for energy efficiency and renewable energy projects on the qualifying property.<sup>253</sup> The projects are paid back through assessments on the owner’s property taxes.<sup>254</sup>

### 5. Wisconsin

On December 5, 2016, Wisconsin Energy Conservation Corporation launched the PACE Wisconsin Program, a statewide program enabling commercial property owners to obtain low-cost, long-term financing for clean energy projects.<sup>255</sup>

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249. Mike Hughlett, *Minnesota Public Utilities Commission Approves Size Caps, Rate Structure for Solar Projects*, MINN. STAR TRIB. (July 21, 2016), <http://www.startribune.com/minnesota-utilities-commission-approves-size-caps-rate-structure-for-solar-projects/387872592/>.

250. *Id.*

251. *Id.*

252. Michelle Frose, *Minnesota’s PUC Approves Xcel’s Energy Plan to Double Renewables*, WINDPOWER ENG’G (Oct. 17, 2016), <http://www.windpowerengineering.com/featured/business-news-projects/minnesotas-puc-approves-xcels-energy-plan-double-renewables/>.

253. *Id.*

254. Legis. B. 1012, 104<sup>th</sup> Leg., 2<sup>nd</sup> Sess. (Neb. 2016).

255. *WECC’s Energy Finance Solution Launches PACE Wisconsin Program*, WIS. ST. ENERGY OFF., <http://www.stateenergyoffice.wi.gov/category.asp?linkcatid=3106&linkid=1536&locid=160> (last visited Mar. 20, 2017).

## II. FEDERAL ACTIVITY

A. *FERC*

On July 21, 2016, FERC issued Order No. 828 revising its *pro forma* Small Generation Interconnection Agreement (SGIA) to require newly interconnecting generators with less than 20 MW capacity to ride through abnormal frequency and voltage events and not be disconnected during such events.<sup>256</sup> Under the rule small generating facilities are not required to disconnect automatically or instantaneously from the transmission provider's system or any other affected systems for an under-frequency or over-frequency condition, or an under-voltage or over-voltage condition and must coordinate the facility's protective equipment settings with any automatic load shedding program of the transmission provider.<sup>257</sup> This revision places the same requirements on generators interconnecting through an SGIA as their larger counterparts.<sup>258</sup>

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256. *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, 156 F.E.R.C. ¶ 61,062 (2016).

257. *Id.*

258. *Id.*

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